

E-FILED 11/14/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FORD MOTOR CREDIT COMPANY, LLC,

NO. C 07-03301 RS

Plaintiff,

**ORDER GRANTING MOTION
TO ENLARGE TIME**

v.

LEWIS FAMILY ENTERPRISES, INC, et al.,

Defendants.

On November 5, 2007, defendants Lewis Family Enterprises, Inc. and Steven Robert Lewis filed a motion under Civil Local Rule 6-3 to extend their time to respond to the complaint herein. Defendants oppose the motion, arguing essentially that had defendants acted more diligently after being served with the complaint, their request to extend the time to respond would have been unnecessary. As noted in the order entered on October 29, 2007, the Court does not condone the failure of any person to take the litigation process seriously, and it is always a party's obligation when served with suit to comply with all applicable court rules and deadlines. As also noted in that order, however, there is credible evidence that defendants did not take action to respond to the complaint because they had received assurances from a representative of plaintiff that the litigation was intended only as a means for plaintiff to get its "ducks in a row" and that plaintiff would "stand down" as long as the negotiations to sell the dealership were continuing.


Whether or not defendants acted with all due diligence, however, plaintiff has failed to identify any prejudice to it that would support precluding defendants even from pleading

1 counterclaims. Although no rule expressly *required* plaintiff or its counsel to stipulate to an
2 extension of time, and even though the duty of vigorous advocacy might support an argument that
3 counsel should not stipulate to exposing its client to affirmative counterclaims, it is also always the
4 duty of counsel, as officers of the court, to present arguments they in good faith believe have merit.
5 Here, the record does not support a conclusion that plaintiff acted without subjective good faith, but
6 in light of the strong policy in favor of resolving disputes on the merits, counsel is urged to negotiate
7 a resolution to any future procedural disputes with an eye to whether any alleged procedural
8 deficiency has caused substantial prejudice. Conversely, defendants will be expected to make every
9 effort to comply with the ordinary time requirements specified in the rules.

10 Good cause appearing, defendants' motion to enlarge time is GRANTED. Defendants shall
11 file their responsive pleadings within 20 days of the date of this order.

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14 IT IS SO ORDERED.

15 Dated: November 14, 2007

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RICHARD SEEBORG
United States Magistrate Judge

ORDER
C 07-03301 RS

THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the Court's CM/ECF program.

Dated: 11/14/07

Chambers of Judge Richard Seeborg

By: /s/ BAK

ORDER
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